

MFR

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OLC: 78-1779  
28 April 1978

STAT MEMORANDUM FOR: [redacted]  
Office of General Counsel

STAT FROM: [redacted]  
Office of Legislative Counsel

SUBJECT: Status of Request to Congress for Determination  
as to What Documents are and What Documents  
are not "Congressional" Documents

1. Per our earlier discussions and meetings regarding what is and what is not to be considered a Congressional document, our staff has continued to pursue this matter with the Senate Select Committee on Intelligence (SSCI). As you know, David Shaw, of the Committee staff, had promised, at our meeting held in SSCI offices some weeks ago, that he would have the response from the Committee (presumably Chairman Bayh) shortly. As you are also aware, the letter did not appear. Therefore, I asked our liaison people to go directly to Mr. Bill Miller, Staff Director of the Committee. Mr. Miller has advised us that he personally considers both requests from and our answers prepared in response to Congress as rightfully the property of Congress, with the Agency fulfilling merely a caretaker role. The bottom line being that if the court in the [redacted] case were to accept this argument, the documents in question would not be reachable under the Freedom of Information Act.

2. Because of the fact that Mr. Mark Kurzman, of the Department of Justice, via [redacted] of your staff, has been pressuring for a written statement from Congress on this matter, we have in turn put more pressure on Mr. Miller to provide us with a written statement of their position in short order. He realizes the seriousness of this issue and has promised to provide us with the Committee's response as soon as possible. I will keep you informed.

cc:

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